

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

RHINELANDER HERNANDEZ,

Petitioner,

v.

CIVIL ACTION NO. 5:23-cv-00003
CRIMINAL ACTION NO. 5:15-cr-00033

UNITED STATES OF AMERICA,

Respondent.

ORDER

Pending are Petitioner’s *pro se* Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 [Doc. 150],¹ filed January 3, 2023, and Respondent’s Motion to Dismiss [Doc. 155], filed January 6, 2023. This action was previously referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission of proposed findings and a recommendation (“PF&R”). Magistrate Judge Eifert filed her PF&R on June 13, 2023. Magistrate Judge Eifert recommended that the Court deny Petitioner’s Motion to Vacate, grant Respondent’s Motion to Dismiss, dismiss this matter, and remove it from the docket.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*” (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner’s

¹ Citations to the public docket come from the Petitioner’s underlying criminal action, Case No. 5:15-cr-00033.


right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on June 30, 2023. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [**Doc. 162**], **GRANTS** the Respondent’s Motion to Dismiss [**Doc. 155**], **DISMISSES** the Petitioner’s Motion to Vacate [**Doc. 150**], and **DISMISSES** the matter.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: August 1, 2023




Frank W. Volk
United States District Judge